

September 26, 2014

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1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION

4 UNITED STATES OF AMERICA,

5 Plaintiff,

6 -v-

Case No. 14-30493

7 KAI XU,

8 Defendant.

9
10 DETENTION HEARING

11 BEFORE THE HONORABLE DONALD SCHEER
12 UNITED STATES DISTRICT JUDGE

13 FRIDAY, SEPTEMBER 26, 2014

14 APPEARANCES:

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September 26, 2014

2

I N D E X

WITNESSES

For the Government:	Page
---------------------	------

MONA IANNELLI

Direct examination by Ms. Woodward.....6

Cross-examination by Mr. Debolski.....36

Redirect examination by Ms. Woodward....40

Recross-examination by Mr. Debolski.....43

EXHIBITS

For the Government:	Marked	Admitted
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1	12	--
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2	40	--
---	----	----

3	41	--
---	----	----

4	24	--
---	----	----

MISCELLANY	Page
------------	------

Proceedings.....	3
------------------	---

Certificate of Reporter.....	55
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September 26, 2014

3

P R O C E E D I N G S

THE CASE MANAGER: Court calls case number 14-30493,
United States of America versus Kai Xu.

MS. WOODWARD: Good afternoon, your Honor. Sara
Woodward on behalf of the United States.

THE COURT: Good afternoon.

MS. WOODWARD: I have spoken with Mr. Chew's
attorney. I know he's here. He may just be in the hallway.
If you'd like me to --

THE COURT: If you would, please.

MS. WOODWARD: Thank you.

MR. DEBOLSKI: Good afternoon, your Honor. For the
record, Tim Debolski appearing on behalf of the Defendant, who
is to my left.

THE COURT: Thank you. Good afternoon. This is the
date and time set for a detention hearing. Have counsel
received copies of the pretrial services report and
recommendation?

MS. WOODWARD: I have, your Honor.

MR. DEBOLSKI: Yes, I have, your Honor.

THE COURT: And the Government insists in detention
request?

MS. WOODWARD: That is correct, yes.

THE COURT: Very well. You may proceed.

MS. WOODWARD: Thank you, Judge. I'm going to

September 26, 2014

4

1 proceed today by proffer, but I'm also going to be calling a
2 witness. Before I call the witness, I just wanted to make a
3 few remarks.

4 The Defendant here is charged in a complaint, as the
5 Court is aware, with crimes that include smuggling goods from
6 the United States and trading in specimens contrary to an
7 international treaty.

8 I do note that pretrial services in this case is
9 recommending that the Defendant be released on bond. And I
10 understand their reason for that. And that is because the
11 information that pretrial services has and that the Court has
12 up until this point relates to only really two incidents of
13 smuggling.

14 One that occurred on August 5th of this year. And
15 then the Court is familiar with the complaint for another
16 gentleman related to this Defendant from September 23rd and
17 24th of this year.

18 And if this case involved only the smuggling alleged
19 in those complaints, those two incidents of smuggling turtles
20 out of the United States, then I think that bond might be the
21 appropriate resolution here. However, as I will be presenting
22 to the Court, that is not all that this case involves.

23 As the Court will hear that Mr. Xu is a full time
24 reptile smuggler and this is not a mistake that he made once
25 or twice. It is a period of time of possibly years of

September 26, 2014

5

1 repeated conduct, repeated smuggling. And you will hear that
2 he has had packages intercepted by the authorities and he has
3 continued smuggling.

4 He, himself, has been caught body smuggling turtles
5 to Canada. And yet he has continued smuggling. And he has
6 also had runners that work for him caught and charged by the
7 Canadians, yet he has never even slowed down in his reptile
8 trade.

9 And you are also going to hear that this case
10 involves a great deal of money. It is not something I would
11 have known before I had this case or perhaps that most people
12 are aware, how valuable these turtles are. And you will hear
13 testimony from the agent to give us just an idea of the amount
14 of money that went into this very lucrative trade.

15 So that said, at this time I will call the Special
16 Agent Mona Iannelli from the United States Fish and Wildlife
17 Service.

18 THE COURT: Agent Iannelli, please come forward.
19 Will you raise your right hand.

20 Do you swear or affirm that the testimony you're
21 about to give in this cause will be the truth, the whole
22 truth, and nothing but the truth?

23 THE WITNESS: I do.

24 Thereupon,

25 **M O N A I A N N E L L I,**

September 26, 2014

6

1 having been called as a witness on behalf of the Government and
2 having been first duly sworn by the Court, was examined and
3 testified as follows:

4 THE COURT: Thank you. Please have a seat in the
5 witness stand, state your full name for the record, and spell
6 your surname.

7 THE WITNESS: My name is Special Agent Mona Iannelli
8 and the last name is spelled I-A-N-N-E-L-L-I.

9 THE COURT: You may proceed.

10 MS. WOODWARD: Thank you, Judge.

11 DIRECT EXAMINATION

12 BY MS. WOODWARD:

13 Q. Agent Iannelli, where are you employed?

14 A. I'm employed with the US Fish and Wildlife Service.

15 Q. And what is your job there?

16 A. I am a Special Agent criminal investigator.

17 Q. How long have you been a Special Agent with the US Fish
18 and Wildlife Service?

19 A. For a period of six years.

20 Q. And where are you currently based?

21 A. I'm currently based in Los Angeles, California.

22 Q. Have you been in Los Angeles for the six years you've been
23 with the Fish and Wildlife Service?

24 A. That is correct.

25 Q. And so what type of crimes do you investigate?

September 26, 2014

7

1 A. Out of the Los Angeles office, we primarily investigate
2 incidents of wildlife smuggling and other wildlife laws.

3 Q. And are you familiar with the investigation of the
4 Defendant Kai Xu?

5 A. I am.

6 Q. And do you see him in court today?

7 A. I do.

8 Q. All right. When did that investigation begin?

9 A. The investigation, my investigation into Mr. Xu began back
10 in March of this year.

11 Q. And how did that begin?

12 A. I was provided with some information by a confidential
13 informant that Mr. Xu was interested in various species of
14 turtles.

15 Q. And did you corroborate that information that you
16 received?

17 A. I did. Corroboration was done by myself with various
18 internet searching and then also speaking with my counterparts
19 up in Environment Canada.

20 Q. And what is Environment Canada?

21 A. Environment Canada is the wildlife enforcement agency for
22 the Canadian.

23 Q. Is it essentially your counterpart in Canada?

24 A. Correct.

25 Q. Do they also investigate criminal violations?

September 26, 2014

8

1 A. They do.

2 Q. And was Environment Canada familiar with Mr. Shoe?

3 A. They were. They informed me that they currently had an
4 investigation into him.

5 Q. And how long, if you know, had they been investigating Mr.
6 Xu's activity?

7 A. For at least a year.

8 THE COURT: Pardon me?

9 THE WITNESS: For at least one year.

10 THE COURT: Thank you.

11 BY MS. WOODWARD:

12 Q. And did they know him to use any aliases?

13 A. They did. They informed me that they knew he had over 20
14 aliases.

15 Q. But they knew his real name to be Kai Xu?

16 A. That is correct.

17 Q. Did you also learn that some individuals associated with
18 Mr. Xu had been arrested by Environment Canada?

19 A. Yes.

20 Q. Would you call those individuals runners?

21 A. Yes, I would.

22 Q. Okay. And can you tell us about one of those individuals?

23 A. One of the individuals was the name of Xin Hong Tong and
24 he was arrested by the Canadian Environment Canada officials in
25 July of last year, 2013, and was found to be smuggling live

September 26, 2014

9

1 turtles and tortoises and told Environment Canada that he was
2 paid by Mr. Xu.

3 Q. And what about a second individual?

4 A. One other individual, his name is Chaoyi Le also was
5 actually arrested on multiple times for smuggling into Canada
6 from the United States also telling Canadian officials that he
7 was paid by Mr. Xu.

8 Q. And these individuals were charged in Canada?

9 A. That is correct.

10 Q. And has one of them failed to appear?

11 A. Yes. At this time, Mr. Le is no where to be found.

12 Q. So the Canadians have not been able to locate him?

13 A. Correct.

14 Q. All right. And through the course of your initial
15 investigation, how did you learn or what did you learn about
16 how Mr. Xu set up his reptile purchases?

17 A. My understanding and through investigation is that Mr. Xu
18 would contact various turtle suppliers or individuals that had
19 turtles for sell by contacting them either through internet
20 websites dedicated to reptiles or by e-mail to inquire about
21 purchasing those reptiles.

22 Q. And did he use aliases when he did that?

23 A. Yes, he did.

24 Q. Now I'd like to talk a little bit about various packages
25 that you have knowledge of that are connected to Mr. Xu during

September 26, 2014

10

1 the course of your investigation. And I'd like to start by
2 directing your attention to April 22nd of 2014.

3 Are you familiar with a package that was shipped on
4 this day?

5 A. I am.

6 Q. And where was that shipped from?

7 A. That was shipped from Port Huron, Michigan.

8 Q. And was that shipped at a Fed Ex facility?

9 A. It was.

10 Q. And what happened to that package?

11 A. That package was seized.

12 Q. Where?

13 A. By foreign officials in China.

14 Q. And was that packaged opened?

15 A. Yes, it was.

16 Q. And what was inside?

17 A. It was found to contain live turtles and tortoises.

18 Q. And the name that shipped the package out, was that Kai
19 Xu's name?

20 A. No. An alias when been used.

21 Q. All right. How did you determine that Mr. Xu was
22 connected to this package?

23 A. I talked to employees from that store in Port Huron and
24 they remember Mr. Xu coming in and picking up a held for Kai Xu
25 package that day that contained turtles. And then he proceeded

September 26, 2014

11

1 to come back into the store less than a half an hour later to
2 ship a package.

3 Q. So you said there was a package at that facility held in
4 his name, his true name?

5 A. Correct. Correct.

6 Q. How is it that he has packages held with his real name but
7 would use an alias to ship a package out?

8 A. When --

9 MR. DEBOLSKI: Your Honor, I object. It's calling
10 for speculation.

11 THE COURT: Witness can testify as to what she knows
12 or what she has been heard -- what she has heard or learned in
13 the course of investigation. This being a preliminary
14 proceeding, hearsay is certainly admissible.

15 THE WITNESS: I was told by Fed Ex employees that any
16 packages that are held at a facility for pickup, you must
17 present identification to pick up a package. And so that
18 identification must match or closely match that name that is
19 on the package.

20 BY MS. WOODWARD:

21 Q. And is it your understand that when you ship a package
22 out, even internationally, you don't have to provide any
23 identification?

24 A. That is correct.

25 Q. Okay. During the course of your investigation, have you

September 26, 2014

12

1 also pulled or determined when Mr. Xu has crossed the border
2 from Canada into America?

3 A. Yes, I have.

4 Q. And how do you do that?

5 A. By contacting our other federal counterparts, the customs
6 and border protection. They are able to provide records of
7 every crossing that an individual has at every port of entry.

8 MS. WOODWARD: All right. Judge, I have Government's
9 Exhibit 1, which I have already provided to the defense that
10 I'm going to hand to the witness at this time and give to your
11 Honor, if that's all right.

12 BY MS. WOODWARD:

13 Q. I'm handing you what's been marked as Government's Exhibit
14 1. Can you tell us what this document is?

15 A. This is the border crossing history for Mr. Xu from, looks
16 like, September of 2012 until the end of August of 2014.

17 Q. All right. And so is there a column on this exhibit that
18 lists the date where -- a date where Mr. Xu would have crossed
19 over into America?

20 A. Yes.

21 Q. All right. And then do you also see in this column all
22 the way to the right a code?

23 A. Yes, I do.

24 Q. And does the third page of this document provide a
25 location that corresponds to those codes?

September 26, 2014

13

1 A. Yes.

2 Q. All right. So if we take a look, is there a crossing on
3 here for April 22nd of this year?

4 A. Yes, there is.

5 Q. All right. And then what is the crossing code on that
6 line?

7 A. On the crossing code on that line is Port Huron, Michigan
8 Blue Water passenger.

9 Q. Okay. So if we look at line 49, the border crossing code
10 is L 85 -- L 385 and that corresponds to Port Huron, Michigan?

11 A. That is correct.

12 Q. Okay. Now, let's talk about May 9 of this year, 2014.
13 Did you have an investigation related to another package on
14 this day?

15 A. I did.

16 Q. And did you, in fact, come to Michigan from California to
17 do surveillance on this day?

18 A. That's correct.

19 Q. All right. And so tell us what happened.

20 A. On May 9th, we had a package that we knew was being
21 delivered to Mr. Xu at the Fed Ex facility in Clinton Township
22 and we set up surveillance. Once we got to that Fed Ex
23 facility, we also learned that there was a second package that
24 was held for pickup for Mr. Xu.

25 We observed Mr. Xu pick up two packages from the Fed

September 26, 2014

14

1 Ex facility in Clinton Township and then proceeded to follow
2 him in a rolling surveillance. We followed Mr. Xu directly
3 from the Fed Ex facility to a UPS customer service center about
4 30 minutes away. And then observed him walk into the UPS
5 facility and pick up a package from there.

6 Q. And then what happened next?

7 A. At that point, Mr. Xu took the package into his vehicle
8 and proceeded to open the packages. We saw him discard some of
9 the packaging material in the UPS parking lot. He just threw
10 it on the ground.

11 We saw him basically making movements in the car that
12 looked consistent with possibly cleaning of the turtles. We
13 then saw Mr. Xu emerge from the vehicle carrying a pair of
14 boots, rubber boots and walked into the customer service
15 center.

16 Q. And what happened when -- next? Did he come back out of
17 the customer service center?

18 A. He did. He actually returned out of the customer service
19 center carrying the same pair of boots and then got into his
20 vehicle and drove away.

21 Q. Okay. And did you talk to the employee inside the store
22 to find out what happened?

23 A. I did. I contacted the employee immediately after Mr. Xu
24 drove away. And the employee informed me that Mr. Xu had
25 presented the boots and was looking to ship those boots to

September 26, 2014

15

1 China, but the store did not have a box big enough for them.

2 The employee also informed me that he had held the
3 boots and they were not empty. They had weight and were
4 consistent with not being empty boots.

5 Q. And after this, did you lose surveillance of Mr. Xu?

6 A. We did.

7 Q. And did you go to various other shipping stores to try to
8 find out where he could have gone to?

9 A. Yes. The UPS employee informed us that he suggested Mr.
10 Xu find another location to purchase a larger box. And we
11 began driving around to the local potential places that he
12 could ship from. And we did find another facility that
13 contacted him.

14 Q. And did you speak to an employee at this second facility?

15 A. I did.

16 Q. And what did he tell you?

17 A. That employee also told me that Mr. Xu had come in
18 carrying a pair of boots wishing to ship those to China and he
19 had provided him with a box. And upon receiving the paperwork
20 to ship the boots out, he had a declared value of less than a
21 hundred dollars on the paperwork.

22 And at that point the employee asked him how would
23 you like to ship this. And Mr. Xu requested that the package
24 be shipped overnight. And the employee informed him that that
25 would be very expensive, over \$400, and your boots are only

September 26, 2014

16

1 worth less than a hundred dollars. Are you sure? And he said
2 yes and had cash to pay.

3 At that point the employee told him to get out of the
4 store.

5 Q. And so he would refuse to ship the package?

6 A. He did. He refused to ship the package. And the employee
7 told me that he believed that there were drugs in the package.

8 Q. All right. Did you ever find out where Mr. Xu shipped the
9 package from on that day?

10 A. We did not.

11 Q. Now, let's talk about June 11 of this year. Was another
12 package related to Mr. Xu investigated on this day?

13 A. Yes, it was.

14 Q. All right. And where was this package sent to for pickup?

15 A. Will you repeat the date again?

16 Q. June 11 of 2014. And this day we're speaking about
17 another individual that picked up a package, not Mr. Xu.

18 A. Yes. That would be Mr. Yan.

19 Q. Can you say that name again for the Court?

20 A. Dong Yan.

21 Q. Is that Y-A-N?

22 A. Y-A-N, correct.

23 Q. Okay.

24 A. So on that date we also knew of a package that was to be
25 received by Mr. Yan in Buffalo, New York.

September 26, 2014

17

1 Now, this package was -- originally the package
2 contained turtles that an alias of Mr. Xu, an alias of Mr. Xu
3 had purchased from a cooperator. And that Mr. Xu's alias told
4 the cooperator that he would be shipping the package to
5 Buffalo, New York and to write down hold for pickup for Dong
6 Yan.

7 Q. And did you also go to New York on this day to do
8 surveillance?

9 A. I did.

10 Q. And did you observe Mr. Yan arrive at a facility in
11 Buffalo to pick up packages?

12 A. I did.

13 Q. And then what happened after he picked up the packages?

14 A. Mr. Yan picked up multiple packages at the Fed Ex facility
15 near the Buffalo airport. And he drove several blocks over to
16 a UPS facility and then parked next to a dumpster and began to
17 basically fidget, open boxes in his vehicle.

18 Q. Did Mr. Yan also ship an outbound package on this day?

19 A. He did. He ended up shipping two outbound packages to a
20 location in Florida and a location in North Carolina.

21 Q. Were those packages intercepted and searched pursuant to a
22 search warrant?

23 A. They were.

24 Q. And what were they found to contain?

25 A. They were found to contain 16 live Asian species of

September 26, 2014

18

1 turtles.

2 Q. And did you conclude that Mr. Yan had body smuggled those
3 from Canada to the United States?

4 A. We had.

5 Q. How did you conclude that?

6 A. Mr. Yan had discarded all of the trash and packaging that
7 he had from the packages that he had received at the Fed Ex
8 facility and placed them at the dumpster. We then recovered
9 that trash right after he deposited it.

10 And following that, after dropping off the two
11 domestic packages, a rolling surveillance was conducted where
12 Mr. Yan was observed the entire time as he drove back up
13 straight from the Fed Ex and UPS facility to the Canadian
14 border where he did stop momentarily and what appeared to
15 agents to be either strapping turtles to himself or into his
16 vehicle.

17 And we informed the Canadian authorities of this.
18 And Mr. Yan was ultimately found to be body smuggling 38
19 reptiles into Canada.

20 Q. So on this day we've been speaking about, just to clarify,
21 on June 11 of 2014, your investigation revealed that Mr. Yan
22 both body smuggled Asian turtles into the United States,
23 shipped them domestically, but also picked up a package in the
24 United States and then body smuggled North American turtles
25 back to Canada?

September 26, 2014

19

1 A. Correct. So the North American species were smuggled back
2 into Canada. And following the Canadians finding the 38
3 species, they were providing photos of the smuggling method,
4 which was Ziplock bags taped to the individual's legs. Upon
5 seeing those photos, I recognized the bags that I had recovered
6 in the trash at the UPS facility were the exact same --
7 appeared to be the same smuggling method. Also had tape on
8 them.

9 They had both the US -- or excuse me, English and
10 French writing on them, appearing to come from Canada.

11 Q. And then the connection to Mr. Xu from this date is based
12 at least in part on a cooperating informant?

13 A. That is correct.

14 Q. Now, let's talk about July of this year, on July 30th.
15 Was there an investigation related to another package on this
16 day?

17 A. Yes, there was.

18 Q. And was US Fish and Wildlife notified that there was a
19 package for pickup at the Detroit UPS for Kai Xu?

20 A. Yes.

21 Q. And did another agent conduct surveillance on this day?

22 A. Yes.

23 Q. And what did he see?

24 A. An agent on that day reported that he saw Mr. Xu pick up a
25 package from the Detroit UPS store and observed him throw out

September 26, 2014

20

1 trash from that package near the UPS store and then drive
2 directly to the tunnel and enter into Canada.

3 Q. All right. And did the agent see him stop and toss
4 garbage over a fence in Detroit?

5 A. Yes, he did.

6 Q. Okay. Let's talk now about August 5th of this year. This
7 is the date that is in the criminal complaint for Mr. Xu; is
8 that right?

9 A. That's correct.

10 Q. Okay. So what happened on this day?

11 A. On that date, I also received a call from a UPS employee
12 at that Detroit, Michigan location reporting that Mr. Xu had
13 another box for pickup.

14 Q. All right. And were you in Detroit on this day?

15 A. No, I was not.

16 Q. All right. But did other Fish and Wildlife agents conduct
17 surveillance?

18 A. Yes, they did.

19 Q. Did they see Mr. Xu arrive at the UPS facility and pick up
20 a package?

21 A. They did.

22 Q. Did they also see him repackage that in the parking lot?

23 A. They did.

24 Q. All right. And did they see him go to a concealed part of
25 the parking lot with a grocery bag and come back out ten

September 26, 2014

21

1 minutes later without that grocery bag?

2 A. Yes.

3 Q. And they also observed irregularly shaped bulges under his
4 sweatpants?

5 A. They did.

6 Q. And when Mr. Xu -- did they observe him go back to Canada
7 on this day?

8 A. They did.

9 Q. And was he sent to secondary on the Canadian side?

10 A. He was.

11 Q. And did the Canadians find he had 51 live turtles
12 concealed in his pants?

13 A. Yes.

14 Q. And those turtles were Eastern box turtles and red eared
15 sliders as well as diamondback terrapins?

16 A. Yes.

17 Q. Have you conducted an investigation into -- actually, let
18 me start over. If we take a look again at Government's Exhibit
19 1, which you have in front of you, and if we could take a look
20 at page 2, lines 58 to 64.

21 A. Yes.

22 Q. All right. According to this document, how many times did
23 Mr. Xu cross into America in August of this year?

24 A. According to this document, seven times.

25 Q. All right. And did he use the same border crossing each

September 26, 2014

22

1 time?

2 A. Yes, he did.

3 Q. And which border crossing was that?

4 A. That is the Detroit tunnel.

5 Q. And we see that looking at this document that he crossed
6 over on August 5th, and that's the day we were just speaking
7 about, correct?

8 A. That is correct.

9 Q. So that's the day that he was sent to secondary in Canada
10 and discovered to have 51 turtles --

11 A. Correct.

12 Q. -- in his pants? And then the next border crossing
13 through the tunnel is on August 8th; is that correct?

14 A. That's correct.

15 Q. So just three days later?

16 A. Yes.

17 Q. And then after that we see August 15. Do you see that?

18 A. Correct.

19 Q. And then August 20th, 22nd, 29th, and 30th are all
20 separate crossings, correct?

21 A. That is correct.

22 Q. Okay. Have you spoken to anyone from the UPS Troy
23 shipping facility?

24 A. I have.

25 Q. And have you learned that Mr. Xu or someone believed to be

September 26, 2014

23

1 Mr. Xu shipped international package from that location on some
2 of the dates that we just spoke about?

3 A. Yes.

4 Q. All right. Let's talk about August 8th. Did someone from
5 the Troy UPS say that Mr. Xu had shipped two packages to China
6 on that day?

7 A. Yes.

8 Q. Was it the same thing on August 15th, the same location?

9 A. Yes, two more packages.

10 Q. And then August 29th?

11 A. Two more packages.

12 Q. And that's, again, from the Troy UPS?

13 A. From the same location, yes.

14 Q. And then what about September 5th?

15 A. Yes, two more.

16 Q. And September's not on this document that we've been
17 speaking about. Why is that?

18 A. When I ran this document, I had -- I ran it on the 30th.
19 So I had up to date. I have not run it since then. But I have
20 received confirmation of his crossings by phone since then.

21 Q. Okay. So Exhibit 1 only has his crossings through August
22 30th, correct?

23 A. Correct.

24 Q. Have you spoken to UPS security about one of the packages
25 shipped from Troy on September 5th of this year?

September 26, 2014

24

1 A. Yes, I have.

2 Q. And what did you learn about one of those packages?

3 A. I learned that one of the packages had been seized by Hong
4 Kong customs.

5 Q. And was that packaged opened in Hong Kong?

6 A. It was.

7 Q. What did that package say on the outside about what it
8 contained, if you remember?

9 A. It did not say what it contained. But the declaration was
10 some sort of snow boot sample.

11 Q. All right. And what was actually found to be inside the
12 box?

13 A. Some snow boots with live -- with over 300 live turtles
14 inside of them.

15 Q. And have you received some pictures taken by Hong Kong
16 customs of that shipment?

17 A. I have.

18 MS. WOODWARD: Judge, I'm going to hand the witness
19 Government's Exhibit 4. The defense has a copy and I will
20 hand one to you as well.

21 BY MS. WOODWARD:

22 Q. Does Government's Exhibit 4 contain some of the
23 photographs taken by Hong Kong customs?

24 A. Yes, it does.

25 Q. And what do we see in those pictures?

September 26, 2014

25

1 A. Those are baby diamondback terrapin turtles.

2 Q. And are they inside of a snow boot?

3 A. Yes, they are.

4 Q. And if you flip through the pages, what other type of
5 turtles do we see?

6 A. I also see some red eared sliders, the yellow turtles in
7 there. Unfortunately this photo is not as good. But I see a
8 lot of diamondback terrapins.

9 Q. All right. And did Hong Kong determine how many turtles
10 were contained in that box?

11 A. Yes, they did. They said 317.

12 Q. Three hundred seventeen turtles?

13 A. Correct.

14 Q. And this may be difficult, but can you give us an idea of
15 the value of some of those turtles? And the value of those
16 turtles here in the United States.

17 A. All of the turtles have a little bit different value. But
18 for example, the yellow red eared slider turtles, those
19 currently going for about \$650 a piece is the purchase price.

20 Q. And that's here in the United States?

21 A. That is here in the United States.

22 Q. Would they be more valuable in China?

23 A. Yes, they would.

24 Q. Do you know how much more valuable?

25 A. Typically it's a multiplier of some sort. Depends on the